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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

TODD ANTHONY TERRY, SR., Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, et al., Defendants and Respondents.	B222112 (Los Angeles County Super. Ct. No. PC042946)

APPEAL from a judgment of the Superior Court of Los Angeles County. Melvin D. Sandvig, Judge. Affirmed.

William R. Pardee for Plaintiff and Appellant.

Roger H. Granbo, Assistant County Counsel, Adrian G. Gragas, Principal Deputy County Counsel, for Defendants and Respondents.

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Plaintiff and appellant Todd Anthony Terry appeals from the judgment entered in favor of defendants and respondents County of Los Angeles and James Larkin, on his complaint for false arrest, false imprisonment, and violation of 42 United States Code section 1983, after respondents' motion for nonsuit was granted. We affirm.

Facts

At trial, it was undisputed that on June 10, 2007, appellant was arrested for violation of Penal Code section 12025, subdivision (a)(2), carrying a concealed firearm, and Penal Code section 12031, subdivision (a)(1), carrying a loaded firearm in a public place. It was also undisputed that at the time of his arrest, appellant was carrying a loaded handgun concealed in the pocket of his shorts, that the arrest was without a warrant, and that respondent Larkin, a Los Angeles County Sheriff's Deputy, was the arresting officer.

The background may be stated briefly. Police arrived at appellant's home after he called 911, telling the 911 operator that gang members had just threatened his son's friend. When the threat took place, the friend, Justin Floyd, was driving home from appellant's house, where he had spent the afternoon. He called appellant's son and appellant.

Floyd told appellant that he was being chased by gang members, who had thrown a bottle at his car and had threatened him with a gun. Appellant told Floyd to return to appellant's home. Appellant then retrieved his handgun from his gun safe, loaded the gun with eight hollow point bullets, and put the gun in the front pocket of his shorts.

Officers arrived fifteen or twenty minutes after the 911 call. Appellant, his son, and Floyd were outside, in front of the house. After putting his dog inside (the dog had a history of attack), appellant told officers that he had a gun and asked if he could put it away. The officers told him not to touch his gun and not to move. They also asked where the gun was. Appellant told them, and one of the officers took the gun from appellant's pocket. Soon thereafter, he was arrested.

There was a great deal of testimony from appellant and Floyd about appellant's location when the officers arrived. There was also testimony on this subject from Larkin. The record is difficult to understand, but as far as we can tell, appellant and Floyd testified that appellant was in his driveway, near his garage, and Larkin testified that appellant was standing on the sidewalk,[1] though he was standing within five feet of his garage later, when officers first spoke to him.

Appellant was also questioned about his decision to stay outside, rather than to go into the house. He testified that when he armed himself, he assumed that gang members were still looking for Floyd. He did not go into the house because he wanted to show his son "how to handle things the right way," that is, by calling police, and because he wanted the gang members to be caught and sent to jail. When asked, "What is more important? Your safety or getting that arrest?" he answered "I wanted them arrested," and also testified that he believed that he could have protected his son and Floyd. If gang members had pointed a gun at him, he would have shot them.

Larkin testified that he arrested appellant for a violation of Penal Code section 12025, carrying a concealed firearm, because "I saw him in public, and he had a loaded weapon on his person that was concealed in public." He knew that someone who had a permit and was inside his or her residence was permitted to carry a loaded weapon, and knew that Penal Code section 12031, on carrying a loaded firearm in a public place, does not preclude the carrying of a loaded firearm by a person who reasonably believes that his or her person or property, or the person or property of another, is in immediate, grave danger and that carrying the weapon is necessary for the preservation of that person or

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[1] Respondents also introduced appellant's deposition testimony that, after he had armed himself but before officers arrived, he had walked down to the driveway to the street to tell Floyd where to park. At trial, he essentially admitted that the testimony was correct. Respondents cite this testimony, but fails to explain its relevance. Probable cause depends on facts known to the officer at the time of the arrest. (*People v. Miller* (1972) 7 Cal.3d 219, 225.)

property. Larkin also testified that appellant had told him that he believed that carrying a loaded handgun was necessary for the protection of his son and Floyd.

There was other evidence. Respondents called (out of order) a police practices expert who opined that the arrest was lawful. Appellant testified about his professional background and volunteer activities, and his purchase and registration of the gun. Larkin testified that he checked with dispatch and with the patrol car's computer concerning the gun's registration, and received erroneous "no record" results, perhaps because the purchase was recent. Floyd testified about the pursuit by gang members and about his (and appellant's son's) membership in a "tagging crew" called EI, and Larkin testified that EI was a gang and that Floyd and appellant's son were dressed like gang members.

Discussion

Appellant correctly argues that on review of a nonsuit, we must interpret the evidence most favorably to the plaintiff's case (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291) and thus that we must analyze this case as though the only evidence was that appellant was in his driveway, not on the sidewalk, when the officers saw him. He argues that because he was in his driveway, he was not in a public place, and contends that nonsuit was improper because the evidence would justify a jury finding that there was no probable cause for the arrest.

He cites in support Penal Code section 12031, subdivision (h), which provides that Penal Code section 12031 does not prevent a person in lawful possession of private property from having a loaded firearm on that property, and Penal Code section 12026, subdivision (a), which provides that Penal Code section 12025 does not apply to someone who carries a lawfully possessed firearm "anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident . . . ."

We find that as a matter of law, the evidence presented by plaintiff is insufficient to permit a jury to find in his favor. (*Nally v. Grace Community Church, supra,* 47

Cal.3d at p. 291.) That is because the area in front of a home, including a private driveway, is "a public place if it is reasonably accessible to the public without a barrier." (*People v. Yarbrough* (2008) 169 Cal.App.4th 303, 319.) *Yarbrough* was decided after the arrest here, but that is of no moment. Its holding is based on existing case law. (*Ibid.*; see also *People v. Jimenez* (1995) 33 Cal.App.4th 54, 60; *People v. Krohn* (2007) 149 Cal.App.4th 1294, 1298-1299.)

Reasonable cause or probable cause to arrest exists when the facts known to the arresting officer would lead a reasonable person to have a strong suspicion of the arrestee's guilt. (*Levin v. United Air Lines, Inc*. (2008) 158 Cal.App.4th 1002, 1018.) As a matter of law, on appellant's evidence, reasonable cause existed here.

Nor are we persuaded by appellant's second argument, that the arrest was without probable cause under Penal Code section 12031, subdivision (j)(1), which provides that "Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property."

On the facts, appellant's belief that carrying the loaded weapon was necessary for the preservation of life or property was not reasonable. First, although gang members had been chasing Floyd, and were close enough to his car to throw a bottle at it, and hit it, those gang members did not arrive at the house with Floyd, or shortly thereafter, and had not arrived in the fifteen or twenty minute interval between the 911 call and the arrival of the Sheriff's deputies. It should have been apparent that there was no immediate threat. Moreover, as appellant admitted at trial, he did not need the gun to protect himself. He, his son, and Floyd, could have retreated to the house and waited for officers there, in safety. They did not do so because appellant was primarily concerned with seeing to it that the gang members were arrested, not with his safety.

Disposition

The judgment is affirmed. Respondents to recover costs on appeal.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.